

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 20 and 38-39 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 20-39 are now pending in this application.

In the action of October 20, 2005, the Examiner objected to claim 38 due to its dependency upon now-cancelled claim 13. In response to this objection, Applicant has amended claim 38 to be dependent upon independent claim 32.

The Examiner rejected claims 21-37 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,675,012. In response to this rejection, Applicant is submitting a terminal disclaimer herewith, disclaiming the terminal part of the term of any patent granted on the present patent application which would extend beyond the full statutory term, as shortened by any terminal disclaimer, of U.S. Patent 6,675,012. This terminal disclaimer is subject to the provisions discussed in the attached document.

The Examiner rejected claim 39 under 35 U.S.C. § 102(e) as being anticipated both by U.S. Publication No. 2002/0060995, in the name of Cervello, and by U.S. Patent No. 6,643,278, issued to Panasik et al. In response to these rejections, Applicant has amended claim 39 to more particularly describe the indication that is used to populate the selected field of the measurement summary. In particular, Applicant has amended claim 39 to describe how a field in the measurement summary contains an indication comprising a first value if the portion of the frequency band is being used to communicate an 802.11-standard-formatted

data packet and a different value if the portion of the frequency band is being used to communicate a data packet other than an 802.11-standard-formatted data packet. As discussed at page 13, line 22-page 14, line 6, the measurement summary includes a field that is populated with a value indicative of whether the frequency range to which the station is tuned contains an 802.11-formatted data packet. A different value is populated in this field if another data packet-type data packet, such as a HyperLan-II-formatted data packet, is detected.

This feature is not taught or even suggested by the two reference cited by the Examiner. With regard to Cervello et al. reference, although this reference may teach a method of determining whether noise or interference is being caused by an 802.11 non-compliant device, the measurement summary shown Figure 7(a) clearly does not compile this information in a way such that a single field is used to identify whether an 802.11-standard-formatted data packet or another type of data packet has been detected. Instead and as discussed at Paragraph 41 of the Cervello et al. reference, one field, the "Measurement Summary" field is used to indicate that at least one valid MAC header was received during the channel measurement (indicative of 802.11 activity), while other fields (i.e., the "CCA Busy Fraction Without Frame Reception" field) are used to provide information that potentially can be used to identify non-802.11 activity. This section clearly demonstrates that the two values are not included in the same field.

Like the Corvello et al. reference, the Panasik et al. reference does not teach or suggest populating one field with a value indicative of 802.11 activity or non-802.11 activity. Column 8, lines 36-67 discuss the recordation of usage characteristics in the Panasik et al. system. As is discussed in this section, the information that is preferably recorded is limited to the time slot and channel in which a packet is detected and the hopping sequence of the incumbent network which transmitted a packet. Although other information concerning the usage characteristics of the packet interference of the scanned channel may be recorded, the Panasik et al. reference does not discuss or even hint at populating a field with a first value if the particular portion of the frequency band is being used to communicate an 802.11-standard-formatted data packet, and populating the field with a different value if the portion is being used to communicate a data packet other than an 802.11 standard-formatted data

packet. For these reasons, Applicant submits that claim 39 as amended is patentable over the cited reference.

The Examiner also rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over the Panasik et al. reference in view of U.S. Patent No. 6,430,193, issued to Raissinia et al. The Examiner asserted that it would have been obvious to incorporate the feature of reporting a physical layer and a media access control layer to an access point, found in the Raissinia et al. reference, with the teachings of the Panasik et al. reference.

In response to the Examiner's rejection, Applicant has amended claim 20 to describe how, if a valid IEEE (Institute of Electrical and Electronic Engineers) 802.11a Beacon Frame cannot be identified, it is reported to an access point that a physical layer similar to IEEE802.11a was found, but that a found media access control was foreign. This feature is neither taught nor suggested by either of the references cited by the Examiner. In the case of the Panasik et al. reference and as discussed above, the information recorded is primarily limited to the time slot and channel in which a packet is detected and/or the hopping sequence of the incumbent network which transmitted a packet, regardless of whether the media access control is foreign or not. The Panasik et al. reference does not teach the recordation of the type of information included in amended claim 20, much less the transferring of such information to an access point. Lastly, the Raissinia et al. reference does not even discuss a situation where a 802.11a Beacon cannot be identified, much less what action should be taken if such an event was to occur. Therefore, Applicant submits that amended claim 20 is patentable over the cited prior art.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1450. Should no proper payment be enclosed herewith, as by a

check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1450. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1450.

Respectfully submitted,

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